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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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11 DARREN ALONZO LEWIS,) Case No.: 1:22-cv-00760-SKO (HC)
12)
13 Petitioner,) ORDER TO ASSIGN DISTRICT JUDGE TO CASE
14)
15 v.) FINDINGS AND RECOMMENDATION TO
16) DISMISS PETITION
17)
18 THERESA CISNEROS, Warden,) [THIRTY DAY OBJECTION DEADLINE]
19)
20 Respondent.)
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18 Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of
19 habeas corpus pursuant to 28 U.S.C. § 2254.

20 Petitioner is currently in the custody of the California Department of Corrections and
21 Rehabilitation (“CDCR”) serving a sentence of 21 years for his conviction in Kern County. In this
22 petition, Petitioner challenges a state court determination that he is not entitled to resentencing
23 pursuant to California Senate Bill 620. Upon review of the petition, it is clear that Petitioner is not
24 entitled to habeas relief. Therefore, the Court recommends that the petition be **SUMMARILY**
25 **DISMISSED.**

26 **I. PROCEDURAL BACKGROUND**

27 On January 9, 2014, Petitioner pled no contest in Kern County Superior Court to a charge of
28 voluntary manslaughter (Cal. Penal Code § 192(a)) and admitted a firearm enhancement (Cal. Penal

1 Code § 12022.5(a)). People v. Lewis, 2015 WL 3955207, at *1 (Cal. Ct. App. June 26, 2015).
2 Petitioner was sentenced to the agreed-upon term of 21 years. Id. Appellate counsel thereafter filed a
3 brief pursuant to People v. Wende, 25 Cal.3d 436 (1979), asserting he did not identify any arguable
4 issues in the case. Id. On June 26, 2015, judgment was affirmed. Id. Petitioner did not petition for
5 review to the California Supreme Court and judgment became final on July 26, 2015. See Cal. Rules
6 of Court 8.264.

7 On October 11, 2017, the California Governor approved Senate Bill 620 which amended
8 California Penal Code §§ 12022.5 and 12022.53 and allowed trial courts at the time of sentencing to
9 strike or dismiss a firearms enhancement “in the interest of justice.” Senate Bill No. 620; see Cal. Pen.
10 Code §§ 12022.5(c), 12022.53(h). The law became effective on January 1, 2018. Id.

11 On June 16, 2020, Petitioner filed in the trial court a petition to modify his sentence and
12 dismiss the firearm enhancement based on Senate Bill No. 620. The trial court denied the petition
13 finding Petitioner ineligible for resentencing. People v. Lewis, 2021 WL 2351174, at *1 (Cal. Ct.
14 App. June 9, 2021). Petitioner appealed, and the California Court of Appeal, Fifth Appellate District,
15 dismissed the appeal. Id. Petitioner then petitioned for review in the California Supreme Court, and
16 review was denied on August 25, 2021.

17 On June 21, 2022, Petitioner filed the instant federal petition in this Court.

18 **II. DISCUSSION**

19 **A. Preliminary Review of Petition**

20 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary
21 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it
22 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
23 the district court” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory
24 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,
25 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
26 answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir. 2001).

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1 B. Failure to State a Cognizable Federal Claim

2 The petition fails to state a cognizable habeas claim. Petitioner claims he should be resentenced
3 based on recent changes to the California Penal Code pursuant to Senate Bill No. 620. Petitioners
4 seeking federal habeas relief must allege that they are in custody “pursuant to the judgment of a State
5 court . . . in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).
6 “[F]ederal habeas corpus relief does not lie for errors of state law.” Estelle v. McGuire, 502 U.S. 62,
7 67 (1991) (citations omitted). “[E]rrors of state law do not concern us unless they rise to the level of a
8 constitutional violation.” Oxborrow v. Eikenberry, 877 F.2d 1395, 1400 (9th Cir. 1989).

9 The Supreme Court has held that “the essence of habeas corpus is an attack by a person in
10 custody upon the legality of that custody.” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). To succeed
11 in a petition pursuant to Section 2254, a petitioner must demonstrate that the adjudication of his claim
12 in state court “resulted in a decision that was contrary to, or involved an unreasonable application of,
13 clearly established Federal law, as determined by the Supreme Court of the United States; or resulted
14 in a decision that was based on an unreasonable determination of the facts in light of the evidence
15 presented in the State court proceeding.” 28 U.S.C. §§ 2254(d)(1), (2). Petitioner may only seek
16 habeas relief if the nature or duration of his imprisonment violates federal constitutional provisions.

17 Petitioner claims California Senate Bill No. 620 should apply to his case retroactively.
18 Petitioner is challenging the state court’s application of state sentencing laws. Such a claim does not
19 give rise to a federal question cognizable on federal habeas review. Lewis v. Jeffers, 497 U.S. 764
20 (1990); Sturm v. California Youth Authority, 395 F.2d 446, 448 (9th Cir. 1967) (“a state court’s
21 interpretation of its [sentencing] statute does not raise a federal question.”) Petitioner fails to state a
22 cognizable federal habeas claim and the petition should be dismissed, because the California state
23 courts have, in applying the state law at issue here - Senate Bill 620 - determined Petitioner is not
24 eligible for state law relief. Petitioner seeks to challenge the California state courts’ interpretation and
25 application of California state law, but this Court has no authority in habeas to address such a
26 challenge.

27 Even if Petitioner stated a cognizable claim for relief, relief is not available to him. In several
28 unpublished decisions, the California appellate courts have held that Senate Bill No. 620 applies

1 retroactively only to judgments in criminal cases that were not final as of the Bill's effective date of
 2 January 1, 2018. See, e.g., People v. Lewis, 2018 WL 1354753, at *8 (Mar. 16, 2018); People v.
 3 Crockett, 2018 WL 914883, at *12 (Feb. 16, 2018); People v. Wilson, 2018 WL 4560933, at *1 (Sept.
 4 24, 2018). The California Court of Appeal affirmed Petitioner's conviction on June 26, 2015, and the
 5 judgment became final on July 26, 2015, well before January 1, 2018. Accordingly, Petitioner would
 6 not be entitled to retroactive application of Senate Bill 620.

7 **III. ORDER**

8 IT IS HEREBY ORDERED that the Clerk of Court is **DIRECTED** to assign a District Judge
 9 to the case.

10 **IV. RECOMMENDATION**

11 The Court HEREBY RECOMMENDS that the petition be **SUMMARILY DISMISSED** with
 12 prejudice.

13 This Findings and Recommendation is submitted to the United States District Court Judge
 14 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
 15 Local Rules of Practice for the United States District Court, Eastern District of California. Within
 16 thirty (30) days after being served with a copy, Petitioner may file written objections with the Court,
 17 and such a document should be captioned "Objections to Magistrate Judge's Findings and
 18 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
 19 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive
 20 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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 22 IT IS SO ORDERED.

23 Dated: **June 24, 2022**

/s/ Sheila K. Oberto
 24 UNITED STATES MAGISTRATE JUDGE